

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ADDAE POWELL,	§
	§
Defendant Below-	§ No. 188, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0803026570
Plaintiff Below-	§
Appellee.	§

Submitted: December 9, 2009

Decided: February 18, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 18th day of February 2010, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On May 5, 2008, the defendant-appellant, Addae Powell, was indicted on eleven counts of first degree robbery, eleven counts of possession of a firearm during the commission of a felony (PFDCF), one count of wearing a disguise during the commission of a felony, one count of second degree conspiracy, one count of possession of a deadly weapon by a person prohibited, and two counts of offensive touching. Less than two weeks before his scheduled trial, Powell's legal counsel filed a motion to withdraw, which was granted. Substitute counsel filed a

speedy trial motion, which the Superior Court granted. Trial was scheduled for March 23, 2009. After the Superior Court denied his motion to suppress and the jury was selected and sworn, Powell entered a plea of guilty to one count each of first degree robbery, PFDCF, and second degree conspiracy. The Superior Court sentenced Powell to a total period of thirty-two years at Level V incarceration, to be suspended after serving ten years for two and a half years at decreasing levels of supervision. This is Powell's direct appeal.

(2) Powell's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Powell's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Powell's attorney informed him of the provisions of Rule 26(c) and provided Powell with a copy of the motion to withdraw and the accompanying brief. Powell also was informed of his right to supplement his attorney's presentation. Powell has raised six identifiable issues for the Court's consideration. The State has responded to Powell's points, as well as to the position taken by Powell's counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must

conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(4) Powell wrote to his counsel multiple times raising six discernible issues to include in the briefing on appeal. Powell asserts that: (i) his speedy trial rights were violated; (ii) his original trial counsel had a conflict of interest, which led to the violation of his speedy trial rights; (iii) his double jeopardy rights were violated by the State when it indicted him on multiple robbery and weapon charges; (iv) his sentence is excessive and constitutes cruel and unusual punishment; (v) the Superior Court erred in denying his motion to suppress; and (vi) the facts do not support his convictions for first degree robbery and PFD CF.

(5) With the exception of the challenge to his sentence, all of Powell's claims on appeal are barred. It is well-settled law that a knowing and intelligent guilty plea waives any objection to alleged errors or defects occurring prior to the entry of the plea.² The record in this case reflects that Powell intelligently and voluntarily entered his guilty plea with full knowledge of the rights that he was waiving as a result of pleading guilty. He stated under oath that he was pleading

¹ *Penon v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

² *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003).

guilty because, in fact, he was guilty of the crimes to which he was pleading. Powell is bound by these sworn statements.³ Accordingly, the Court will not consider on appeal any allegations of errors that occurred prior to the entry of his plea.

(6) Powell's remaining claim is that his sentence is excessive and constitutes cruel and unusual punishment. We disagree. The maximum sentence that the Superior Court could have imposed for Powell's convictions was fifty-two years at Level V incarceration. Instead, the Superior Court sentenced Powell, in accordance with his plea agreement, to thirty-two years at Level V incarceration, to be suspended after serving ten years for lesser degrees of supervision. Given that Powell's sentence was well within the statutory limits and followed the recommendation set forth in his plea agreement, we find no abuse of the Superior Court's discretion in sentencing Powell.⁴

(7) This Court has reviewed the record carefully and has concluded that Powell's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Powell's counsel has made a conscientious effort

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ *See Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992) (holding that, absent a showing of the imposition of an illegal sentence or an abuse of the sentencing court's discretion, appellate review of a sentence generally ends upon a determination that the sentence is within legislative limits).

to examine the record and the law and has properly determined that Powell could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice